IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6933 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

MANSUKHGIRI GAJRAJGIRI GOSWAMI

Appearance:

1. Special Civil Application No. 6933 of 2004

MR RAJESH R DEWAL for Petitioner No. 1

MR PANKAJ R DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 16/07/2004

ORAL JUDGEMENT

Rule. Mr.P.R.Desai waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates for the parties, the petition is

being taken up for final disposal today.

2. In the present petition, the petitioner has challenged the award dated 12.1.2004 by which the Presiding Officer, Labour Court, Rajkot was pleased to partially allow the reference (LCR) No.153/97 filed by the respondent-workman. The respondent-workman was working as a fitter with the petitioner, Gujarat State Road Transport Corporation. For alleged authorized absence for a period between 6.5.96 and 17.6.96, the petitioner issued a chargesheet against the respondent on 21.8.96. At the end of the departmental inquiry, by order dated 19.11.96, the Disciplinary Authority passed order of dismissal from service against the respondent. Being aggrieved by the said order of dismissal, the respondent raised the above mentioned dispute before the Labour Court, Rajkot. The Labour Court, Rajkot, observed that the respondent had remained absent on account of sickness and had also sent doctor's certificate along with his leave application. The Labour Court, therefore, found that the penalty of dismissal from service, in the facts of the case, was not justified and the penalty was harsh. The Labour Court, therefore, in exercise of powers under section 11-A of the Industrial Disputes Act was pleased to quash and set aside the order of penalty and pass order directing the petitioner to reinstate the respondent-workman with 60 per cent backwages.

3. The Labour Court had observed that the respondent-workman had actually sent his leave reports as well as medical certificate. The same were, however, not taken into account. The Labour Court also found that the past record of the respondent does not show previous such occurrences. The Labour Court, therefore, concluded that the penalty of dismissal was not justified in the facts of the case.

4. I have examined the material placed before me and I am of the opinion that the Labour Court was perfectly justified in coming to the conclusion that the order of dismissal passed against the respondent was not justified in the facts of the case. It is not in dispute that the respondent workman had remained absent only for a period of 41 days. It is also not in dispute that there were no such instances in the past record of the respondent. This by itself would be sufficient in the facts of the present case to come to a conclusion that the order of dismissal was extremely harsh and disproportionate to the proved misconduct. In the present case, the additional circumstances available to hold the penalty disproportionate are that the respondent workman had

actually sent leave reports with medical certificates. This aspect of the matter has also not been seriously disputed by the petitioner. Though the leave applications were not granted, the fact that the respondent workman had submitted leave applications with medical certificate is a mitigating circumstance to reduce the penalty. In this view of the discussion, I find no illegality committed by the Labour Court in coming to the conclusion that the order of dismissal could not have been sustained. The question, however, remains is with respect to the direction to pay 60 percent backwages to the respondent. In my view, the Labour Court was not justified in directing payment of 60 per cent backwages for the intervening period. Though the respondent has put forth a case of having applied for leave with proper certificate, it is not in dispute that during the course of departmental inquiry he had remained absent and the inquiry had therefore concluded ex-parte. Considering the overall facts and circumstances, I am of the opinion that the ends of justice would be served if the directions to pay backwages contained in the Labour Court are set aside. In conclusion, I find that the award of the Labour Court in so far as the reinstatement with continuity of service is upheld, however the direction with respect to payment of backwages cannot be sustained and is required to be quashed.

5. In the result, the petition is partially allowed. The award of the Labour Court is set aside in so far as the same pertains to direction for payment of backwages only. Consequently, the respondent workman shall have to be reinstated in service with continuity for all purposes, however without backwages. The petition stands allowed to the aforesaid extent. In view of the fact that this petition is now disposed of, it is expected that the petitioner shall reinstate the respondent without any further delay. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)